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NO. 97-1690

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1997

ANTHONY J. LOBUE AND THOMAS KULEKOWSKIS,
Petitioners,

v.

JOSEPH G. DILEONARDI, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF ILLINOIS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioners respectfully submit this reply brief in support of their petition for a writ of certiorari. For the reasons given below, a grant of certiorari or, in the alternative, summary reversal is warranted with respect to each of the questions presented.

I. THE QUESTION WHETHER LEGAL GUARDIANS, LIKE PARENTS, ARE EXEMPT FROM THE FEDERAL KIDNAPPING STATUTE

The government concedes that the following facts are undisputed. One, Tammy DeSilva suffered "severe brain injury" in an auto accident. Gov't Brief at 2. Two, Tammy's husband, Anthony, was appointed

legal guardian over her person and affairs. *See id.* Three, Anthony brought a tort action on her behalf so that she could recover damages for the accident that disabled her. *See id.* Four, Anthony attempted to transport his wife and ward to Illinois because the litigation "required Tammy to undergo a medical examination." *Id.* This set of facts describes the progress of a guardianship – not the course of a kidnapping.

It is inconceivable that Congress intended to label the transportation of a ward by a guardian who (like Anthony here) is legally endowed with custody over her person a "kidnapping." The government (following the Seventh Circuit decision below) argues that the federal kidnapping statute must apply to legal guardians simply because it does not exempt them by name. *See* Gov't Brief at 12. But this Court has stated, directly to the contrary, that both "parents [and] *legal guardians*" are exempt from the statute's reach. *Chatwin*, 326 U.S. 455, 460 (1946) (emphasis supplied). The Tenth Circuit reached the same conclusion in *United States v. Floyd*, 81 F.3d 1517, 1523-24 (10th Cir. 1996).

The Seventh Circuit's decision below thus both warrants summary reversal pursuant to *Chatwin*, and, along with the Tenth Circuit's decision in *Floyd*, creates a significant Circuit split.

II. THE QUESTION WHETHER A FEDERAL COURT IN A PROSECUTION FOR KIDNAPPING MUST DEFER TO RELEVANT STATE FAMILY LAW

The government now claims that, under *Chatwin,* consent in a federal kidnapping prosecution is always a fact question, as to which state family law (even, as here, an individualized state court order) somehow plays only an evidentiary, and not a legal, role, so that it cannot be dispositive. Gov't Brief at 10-11. However, *Chatwin*'s careful discussion of state law – which properly treats that law as what it is, law, not trial evidence – rebuts the government's claim, and shows why summary reversal, or a grant of certiorari, is appropriate here.

In *Chatwin*, the Court held that Utah law did *not* hold the minor at issue to be incapable of exercising the power of consent based on her age alone. Because Utah law did not supply a clear rule of decision, the Court next looked to the majority rule among the States – on the assumption that Utah would follow it. The Court found that the majority rule in the States, like the rule in Utah, did *not* invalidate the consent of the minor at issue based on her age alone. *Only then* – after exhausting the relevant sources of state law, and finding that none was dispositive – did the Court turn to a factual inquiry as to whether the minor had consented to be transported.

In summary, *Chatwin* affirmatively mandates the application of relevant state law, and allows a factual inquiry to be conducted by the federal court only as a fallback, when no state law applies. It would thus turn *Chatwin* on its head to read it – as do the government and the decision below, *see* Gov't Brief at 10-11 – as an invitation to federal courts to re-adjudicate, as a matter of fact, domestic relations issues previously resolved as a matter of law by state legislators and judges.

The government's faulty interpretation of *Chatwin* would, if adopted, improperly constrict the proper Constitutional role of the States. State law on custody, capacity, and competence deserves to be accorded full deference by a federal court, because domestic relations is the quintessential province of state law. This case itself well illustrates the hazards of imposing federal "logic" on the "page of history" that constitutes state domestic relations law. *See* Petition at 11, 27.

The government's interpretation of *Chatwin* would also, if adopted, wreak havoc with the duties and expectations created by state domestic relations law. A guardian must be able to rely on the state court order that empowers him, and shifts decisionmaking power from ward to guardian, when he makes difficult decisions on behalf of his incompetent ward with respect to travel. Yet the government's interpretation of *Chatwin* would prevent a guardian from *ever* fully doing so.

Following the Seventh Circuit's decision below, the government interprets *Chatwin* to mean that evidence of an *interval of lucidity* on the part of the ward can trump a valid state court guardianship order, and change transportation into kidnapping. Gov't Brief at 11.[1] Thus, under the government's view, a layperson guardian who – like Anthony and many other relatives and caretakers of incompetent adults – lacks psychiatric training must nevertheless be able to accurately judge whether his ward is, for a brief period, sufficiently lucid that his appointment as her guardian is suspended, so that she may make her own decisions. If the guardian is wrong, he faces a possible federal prosecution.

It is no answer to say that the guardian should simply defer to the ward's wishes whenever the ward seems as if she might be sufficiently lucid that she can make her own decisions. If the guardian adopts this strategy to avoid criminal prosecution, he only risks disserving the interests of his incompetent ward (who may, as here, have an important interest that requires

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[1] Here, for example, the government claims that Tammy "communicated intelligibly and rationally with U.S. Customs officials" over a brief period, and that Anthony therefore may be subjected to criminal prosecution. Gov't Br. at 11. In fact, Tammy's answers to Customs officials were disjointed and contradictory. Petition at 4. Moreover every court and doctor to address the issue has found Tammy to be *permanently* incapable of responsibly making her own decisions. *Id.* at 2. This was, of course, the reason that she was adjudicated incompetent, and assigned a guardian, in the first instance.

travel). Thus, the government offers the guardian not just a trap for the layperson, but also a Hobson's Choice.

Anthony's situation illustrates this point. According to the government, to avoid criminal prosecution, Anthony should have deferred to Tammy's on-the-spot protests against travel for the required medical exam – despite that fact that she had been previously adjudicated incompetent due to severe brain injury, and despite the state court's guardianship order. But this is no solution. If Anthony had taken the government's advice, he would have risked a dismissal of the tort suit that he had brought on Tammy's behalf, on the ground that she had not appeared for the required medical examination. Such a dismissal would, in turn, have meant that Anthony had failed his severely disabled wife and ward. It would also have exposed Anthony to the risk that he would lose his guardianship, and face potentially huge civil liability, for breach of his fiduciary duty to oversee Tammy's financial affairs. The job of the guardian of an incompetent ward, who must often act in the ward's best interest despite vocal protests and recriminations, is difficult enough without impossible choices like those the government would impose.

The deference to state law that is mandated by *Chatwin*, *McCabe*, and *Floyd* obviates the need for this Hobson's Choice. Like *Chatwin*, *McCabe* and *Floyd* plainly defer to state law – contrary to the government's

claim. *McCabe* cites four state court decisions; it also cites to that part of *Chatwin* that discusses state law. *United States v. McCabe*, 812 F.2d 1060, 1061-62 (8th Cir. 1987). *Floyd*, for its part, applied Oklahoma domestic relations law to fact when it concluded that the defendant had lost legal custody when he voluntarily relinquished his ward to a state agency. 81 F.3d at 1525. These Eighth and Tenth Circuit decisions thus create a direct, significant split with the Seventh Circuit decision below, on the question whether a federal court should defer to state domestic relations law in a prosecution pursuant to the federal kidnapping statute.

For these reasons, with respect to the federalism issue here – as with respect to the interpretation of the federal kidnapping statute – the decision below both flouts *Chatwin* and creates a significant Circuit split.

CONCLUSION

The federal kidnapping statute was not intended to authorize prosecutions of court-appointed guardians for transporting the very wards over which they have legal custody. Nor was it intended to allow unelected federal judges to overrule the will of state judges, state legislatures, and local communities on domestic relations issues, by ignoring applicable state law on custody, capacity and consent. In our federal system, the intimate familial sphere of domestic relations is, and should remain, the quintessential province of state law. Summary reversal or, in the alternative, a grant of certiorari is therefore appropriate here.

Respectfully submitted,

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